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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 96-13

In the Matter of

Amendment of Section 73.202(b). RM-8740
Table of Allotments,
FM Broadcast Stations.
(Georgetown and
Millsboro, Delaware)

NOTICE OF PROPOSED RULE MAKING

Adopted: January 31, 1996; Released: February 13, 1996

Comment Date: April 5, 1996

Reply Comment Date: April 22, 1996

By the Chief, Allocations Branch:

1. The Commission has before it for consideration a petition for rule making filed on behalf of Great Scott Broadcasting ("petitioner"), licensee of Station WZBH, Georgetown, Delaware. Petitioner requests the substitution of Channel 228B for Channel 228B1 at Georgetown and reallocation of Channel 228B from Georgetown to Millsboro, Delaware, and modification of the license for Station WZBH accordingly. Petitioner states that it will apply for Channel 228B if it is reallocated to Millsboro.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See *Modification of FM and TV Authorizations to Specify a New Community of License ("Modification")*, 4 FCC Rcd 4870 (1989), *recond. granted in part*, 5 FCC Rcd 7094 (1990). In support of its proposal, petitioner contends that adoption of its proposal will result in a preferential arrangement of allotments by providing Millsboro with its first local aural transmission service without depriving

Georgetown of its sole local broadcast service. Station WSSR(AM) is licensed to Georgetown with the community continuing to receive service from Station WZBH. Further, petitioner advises that Millsboro is located in Sussex County and that the 1990 Census credits the community with a population of 1,643 people. According to petitioner, the substitution and change of community will enable Station WZBH to increase the number of persons it serves from 62,871 persons to 87,574 persons. Finally, petitioner states that since Millsboro is not located in or near an urbanized area, the reallocation would not result in the transfer of the station from a rural to an urban area.

3. We believe petitioner's proposal warrants consideration since the substitution of Channel 228B for 228B1 and the reallocation of the channel from Georgetown to Millsboro, could provide Millsboro with its first local aural transmission service and enable Station WZBH to serve a larger area. However, since petitioner proposes to relocate its transmitter site to accommodate its proposal, it may result in areas that will lose existing reception service. Therefore, although petitioner has provided some information in its proposal concerning increases in service, it is requested to provide data regarding areas and populations which will gain and lose existing service if Channel 228B is reallocated to Millsboro.¹ The study should also reflect the total reception service that is now available within the gain and loss areas.²

4. Channel 228B can be allotted to Millsboro, Delaware, consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules at the petitioner's proposed site 31.4 kilometers (19.5 miles) south of the community.³ We shall not accept competing expressions of interest in the use of Channel 228B at Millsboro or require petitioner to demonstrate the availability of an additional equivalent class channel at Millsboro.

5. In view of the fact that the proposed allotment would provide a first local FM broadcast service to Millsboro, Delaware, the Commission believes it would serve the public interest to solicit comments to amend the FM Table of Allotments. Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

Community	Channel No.	
	Present	Proposed
Georgetown, Delaware	228B1	---
Millsboro, Delaware		228B

¹ As the Commission has previously stated: "The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocation of a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both." See *Modification, supra*, at 5 FCC Rcd 7097.

² Reception services are those aural broadcast services that can be received within a given geographical area, including full-time AM and FM commercial stations. In determining reception service provided by an FM station, one considers the area of service circumscribed by the station's 1.0 mV/m signal contour, assuming maximum facilities for the class of station except Class C. For Class C stations, one uses the minimum or existing Class C facilities, whichever is greater. The area of reception service

for full-time AM stations is defined according to whether it is a clear channel Class AM station or another class of full-time AM station. For a clear channel Class A station the reception area is defined by a station's 0.5 mV/m groundwave contour, based on its licensed facilities. For all other classes of full-time AM stations, reception service is defined as that service received within a station's nighttime interference-free contour. For purposes of determining the availability of aural services in the areas affected by a change of community proposal, a petitioner should include in its study reception services provided by all relevant AM and FM stations. Reception areas that receive at least five radio services are considered to be well-served.

³ The coordinates for Channel 228B at Millsboro, Delaware, are 38-18-53 and 75-13-50.

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **April 5, 1996**, and reply comments on or before **April 22, 1996**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Dennis P. Corbett
Deborah R. Coleman
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2000 K Street, N.W., Suite 600
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8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.